

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No.: 94-CR-494
	:	
Plaintiff,	:	JUDGE DONALD C. NUGENT
	:	
v.	:	REQUEST FOR COURT TO ENDORSE
	:	SHAUNA BARRY-SCOTT'S REQUEST
SHAUNA BARRY-SCOTT,	:	FOR CLEMENCY TO THE
	:	PRESIDENT OF THE UNITED STATES
Defendant.	:	

Now comes Shauna Barry-Scott, through counsel, and requests this Court, in writing, endorse Ms. Barry-Scott's request for clemency to the President of the United States. A memorandum in support is attached.

Respectfully submitted,

s/ Jeffrey B. Lazarus

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MEMORANDUM

Shauna Barry-Scott is serving a mandatory sentence of 240 months of imprisonment. Ten years ago, at the age of 41, Ms. Barry-Scott's entire criminal consisted of one felony conviction for drug trafficking and one felony conviction for perjury. Then in 2004, she was charged and convicted of possession with intent to distribute 120 grams of crack cocaine. Because of her single prior drug trafficking conviction, this Court was forced to sentence her to the mandatory minimum of 240 months under 21 U.S.C. § 841(a)(1), (b)(1)(A), 851. She has faithfully served ten years in federal prison, with no disciplinary infractions and has taken a number of courses to rehabilitate herself.

Since her sentencing, the Sentencing Commission has lowered the base offense levels for crack cocaine offenses on three different occasions: Amendment 706 (eff. November 1, 2007); Amendment 750 (eff. November 1, 2011); Amendment 782 (eff. November 1, 2014). Furthermore, Congress and the President have passed the Fair Sentencing Act, categorically lowering the statutory penalties for crack cocaine offenses. Following these statutory and guideline changes, if Ms. Barry-Scott were indicted today for the same offense – possession with intent to distribute 120 grams of crack cocaine – she would not be subject to a mandatory 20-year sentence, but her sentencing guideline range would likely be 78-97 months in prison. This sentencing guideline is based on a total offense level 26, Criminal History Category III. While Ms. Barry-Scott's offense, today, would carry a five-year mandatory minimum statutory sentence (21 U.S.C. § 841(a)(1), (b)(1)(C)), she may also be subject to a ten-year statutory minimum if the government sought an enhancement under 21 U.S.C. § 841(a)(1), (b)(1)(B), 851. Either way, Ms. Barry-Scott has served an actual sentence of 105 months to date, and with inclusion of her "good time credits" has served over ten years in prison.

Despite these hypothetical reductions and claims of “if she were sentenced today,” Ms. Barry-Scott still remains sentenced to a mandatory 240 months in prison. She has not been able to receive any sentencing relief from either the 2007, 2011, or 2014 retroactive crack cocaine amendments. While these ameliorative make retroactive changes to the sentencing guidelines by lowering base level offenses, those sentenced to statutory mandatory minimum sentences, like Ms. Barry-Scott, are legally prevented from any reduction. Thus, she can find no relief from the courts directly.

Ms. Barry-Scott now seeks relief from a different branch of government through an application for clemency to the President of the United States. The power of clemency allows the President to evaluate whether Ms. Barry-Scott warrants commutation of her sentence. The President has already commuted sentences for eight defendants serving lengthy crack cocaine sentences. “Obama Commutes Sentences for 8 in Crack Cocaine Cases.” New York Times, December 19, 2013.¹ The defendants receiving commuted sentences mirror Ms. Barry-Scott in that they would also have received reduced sentences if indicted today. In the wake of the President’s grant of clemency to these eight inmates, the Department of Justice has publicly pledged to consider other inmates serving crack cocaine sentences for clemency. In January, Deputy Attorney General James Cole announced the President wants the defense bar to seek clemency on behalf of inmates serving crack cocaine sentences. “Justice Dept. Starts Quest for Inmates to be freed.” New York Times, January

¹Available at:
<http://www.nytimes.com/2013/12/20/us/obama-commuting-sentences-in-crack-cocaine-cases.html?adxnnl=1&adxnnlx=1395677456-+Buf69RmF3Kj0sCxDe0C6A>

30, 2014.² Given the invitation from the President and the Attorney General's Office, Ms. Barry-Scott will now seek relief from the President and intends on filing a petition for clemency.

Last month, the Justice Department, through Deputy Attorney General James Cole, announced six criteria for inmates to be eligible for clemency. "DOJ Gears Up for Massive Obama Clemency Push." Huffington Post, April 23, 2014.³ These six criteria are as follows:

- 1) inmates who are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense today;
- 2) are non-violent, low-level offenders without significant ties to large-scale criminal organizations, gangs, or cartels;
- 3) have served at least 10 years of their sentence;
- 4) do not have a significant criminal history;
- 5) have demonstrated good conduct in prison; and
- 6) have no history of violence prior to or during their current term of imprisonment.

Ms. Barry-Scott absolutely meets all these criteria and would be an ideal candidate for clemency. In the coming weeks, Ms. Barry-Scott will be submitting a petition for clemency to the President of the United States. Ms. Barry-Scott would appreciate if this Court would, in writing, endorse Ms. Barry-Scott's clemency petition to the President. A letter from this Court in support of Ms. Barry-Scott would be very powerful evidence to accompany the petition. This Court, who tried Ms. Barry-Scott,

² Available at:
<http://www.nytimes.com/2014/01/31/us/politics/white-house-seeks-drug-clemency-candidates.html>

³ Available at:
http://www.huffingtonpost.com/2014/04/23/obama-clemency-doj_n_5196110.html

sentenced her, and evaluated her sentence reduction motions, is in a superior position to enlighten the President as to whether Ms. Barry-Scott is a good candidate for clemency. The undersigned has made a similar request from other Judges in this district; specifically Judge Dowd has endorsed clemency for a similar-situated defendant. United States v. Badley, 1:95-CR-125, Dkt. 245 (July 18, 2014).

Therefore, Ms. Barry-Scott respectfully requests this Court, in writing, endorse Ms. Barry-Scott's petition for clemency to the President of the United States. Ms. Barry-Scott requests this Court file, or mail, such an endorsement, so the undersigned can physically attach it to her clemency petition. If this Court would like to see a copy of Ms. Barry-Scott's draft clemency petition, or requires any documents regarding Ms. Barry-Scott's offense, sentence, pleadings, or rehabilitative efforts, the undersigned is willing to provide them at this Court's request.

Respectfully submitted,

s/ Jeffrey B. Lazarus

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Attorney for Shauna Barry-Scott

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2014, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

s/ Jeffrey B. Lazarus
JEFFREY B. LAZARUS
Office of the Federal Public Defender